IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.358 OF 2004

Shri Lahu Nana Dethe & Ors. .. Appellants

Versus

Shri Mahadeo Thakaji Thorat & Ors. Respondents

Mr.Sachin U. Dhakephalkar for appellants

Mr.Nitin Muley i/b G.S.Godbole for respondents

CORAM : P.V.KAKADE, J.

DATE : 8TH JUNE, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by 5th Addl. District Judge, Pune on 1st December 2003 dismissing the appeal which was preferred by the appellant against the judgment and order passed by Civil Judge, Junior Division, Ghodegaon decreeing the suit and directing the

defendants to hand over possession of the suit property to the plaintiffs within two months from the date of the said order.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs have filed the suit for permanent as well as mandatory injunction and alternatively for possession of the property. The suit came to be decreed after hearing both the sides and considering the evidence led by them. The appeal was preferred against the decree passed by the lower court and the learned First Appellate Court Judge dismissed the appeal after hearing both the parties. While dismissing the appeal the learned First Appellate Court Judge framed the points for determination as follows :

(1) Whether the judgment and decree passed by the trial court directing the appellants to handover the possession of the suit plot needs interference?

(2) What Order?

4. Time and again this Court has emphasised on the provision of Order 41, Rule 31 of the Civil Procedure Code and has observed that since the first appellate court is final court of facts, it must frame proper points for determination and record its findings thereon. It was urged on behalf of the appellant that the manner in which the points were framed and the reasons were recorded, shows non application of mind of the learned Appellate Court Judge. After perusal of the reasoning adopted by the learned Appellate Court Judge I subscribe to the view expressed by the counsel for the appellants. It is apparent that the learned trial court has framed as many as 10 issues for determination and recorded its findings on each and every issue on the basis of available evidence, which was exhaustively discussed by the learned trial court. However, the first appellate court thought it fit neither to frame proper points for determination nor found it necessary to discuss the entire evidence led by the parties relating to the points to be raised for determination but felt satisfied by framing only one point as noted above. This clearly is in contravention of the decision of this court in the case of **Janardan Nago Patil vs.**

Ramanand Ramdas Mishra reported in **2003(4) Mh.L.J. 853**. This ruling came following the ruling in the case of **Anita Baretto vs. Abdul Wahid Santosh**, reported in **1984 Mh.L.J. 931** wherein this court has criticised the practice followed by the district court in not framing all the necessary points for determination.

. In this respect I would hesten to add that this court has also taken view in another case that even if the points for determination are not satisfactorily framed, however, if the body of the reasons of the judgment of the appellate court is sufficient to show that each and every point was taken up and discussed exhaustively, then that would be sufficient compliance with the provision of Order 41 Rule 31 of C.P.C. However, this has also not been followed in the present case when we peruse the cryptic order passed by the learned appellate court while disposing of the appeal, which shows its non application of mind. In the result I am of the view that the matter is to be remanded to the first appellate court to hear the appeal afresh and record its findings after framing the points for determination exhaustively and properly.

5. Hence the order passed by the Addl. District Judge, Pune dated 1st December, 2003 is hereby set aside. The appeal is remanded to the said Court for hearing afresh and to determine it after framing proper points for determination and recording the reasons exhaustively on the basis of available evidence on record. The appeal to be disposed of after giving notice to both the sides and hearing them properly within eight weeks from the receipt of Writ of this Court. With this direction the appeal stands disposed of with no order as to costs.

. Consequently the Civil Application also stands disposed of with no order as to costs.

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